AN ESSAY

Concerning the

LAWS of NATIONS,

AND THE

RIGHTS of SOVERAIGNS.

With an Account of what was ſaid at the Council-Board by the Civilians upon the Queſtion, Whether their Majeſties Subjects taken at Sea acting by the late King's Commiſſion, might not be looked on as Pirates?

With REFLECTIONS upon the ARGUMENTS of Sir *T. P.* and Dr. *Ol.*

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Concerning the

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THE Malice of the *Jacobites* is so restless, that it omits no Opportunity to raise Stories, though never so false and improbable; scruples at no Means, tho never so Base and Dishonourable, to reflect upon and expose the Government. What have they not said against it, for designing to try as Pirates those who accepted Commissions from the late King, to take the Ships and Goods of Their Majesties Liege Subjects? So strangely afraid are they, that People should be discouraged from disturbing the Trade and Commerce of the Nation. And to make what they report the more colourable, and the injustice of trying them (contrary, as they say, to the known Laws of Nations) apparent, they have every where dispersed false Accounts of what was said by those Civilians, who, when consulted by the Privy Council upon this Question, Whether Their Majesties Subjects taken at Sea, acting by the late King's Commission,

might not be looked on as Pirates? were of Opinion, that by the Laws of Nations they ought to be ſo. Whoſe Reaſons (beſides all the dirt imaginable that they have thrown on their Perſons) they have ſo repreſented, by altering, or leaving out what was moſt material, as to make them appear ridiculous.

The Duty I owe to the Publick, ſince no better Pen has attempted it, will oblige me to give an impartial Account of the whole Proceeding; which will be ſufficient to wipe off all the Lies and Calumnies they have diſperſed, and to perſwade all impartial Perſons, that thoſe who were taken acting by the late King's Commiſſion at Sea, ought by the Law of Nations to be condemn'd as Pirates.

But that the Reader may better apprehend and judge of the Reaſons that were urged on both ſides, and of the Queſtion it ſelf; it will be neceſſary to ſhew, what the Laws of Nations are, and how far Kings and other Supream Governours are concerned in them.

The Laws of Nations are certain Rules and Cuſtoms obſerved by Nations in their entercourſe with one another; which upon the account of their evident and common Profit, as they are neceſſary for their maintaining a mutual Correſpondence, have been conſtantly practiſed by them, and are eſteemed as Sacred. They are built upon no other Foundation than the general Good of Societies, to which a mutual Correſpondence, that could not be upheld but by obſerving theſe Rules, is highly neceſſary.

The ſeveral Legiſlative Powers of Nations never enacted ſuch Laws; nor have all other Nations Authority to oblige any Sovereign Independent State, which can

can no otherwiſe be bound to obſerve theſe Rules, but as they tend to the mutual good of Societies.

So that the Law of Nations and Nature, is in effect the ſame. The Law of Nature (I mean that part of it which concerns the Duty of Man to Man) is nothing elſe but that mutual Aid and Aſſiſtance, which by reaſon of their common Neceſſities one Man owes to another, without the obſervance of which Mankind could not well ſubſiſt. Which Law, as it reſpects the duty of ſingle Perſons to one another, is call'd the Law of Nature; but as it reſpects Men collectively as they are Bodies Politick, and the relation they have to one another as ſuch, is called the Law of Nations; who in reſpect of one another are in the State of Nature, and in their mutual correſpondence, are bound by no other Laws but thoſe of Nature.

Though it is generally affirmed by Authors, that there are many things which are meerly Poſitive, and in themſelves Indifferent, that are part of the Law of Nations; yet they no way endeavour to prove it, or pretend to ſhow how long any thing muſt be practiſed, or among how many Nations, to make it an Univerſal ſtanding Law to all Nations.

In a Civil Society, Cuſtoms grow into Laws, becauſe it is the Will of the Supream Powers they ſhould. Cuſtoms are their preſumed or unwritten Will, which they by their expreſs Will may alter as they pleaſe. But amongſt different Nations, there is no Common Legiſlative Power; but every Nation is at liberty to act as it pleaſes. Nor can any Nation be preſumed to tie it ſelf up further than their own, or the Common Good of Societies do require it: Nor can they by any Cuſtoms, though of never ſo long continuance, if they are in their Nature indifferent, be any longer bound than they pleaſe; provided they publickly declare, that as they intend not to uſe them

any longer themſelves, ſo they leave others the ſame liberty. A Nation, it is true, ought not lightly to change what they have generally practiſed, it looks like affecting Singularity, and being as it were out of the Faſhion; but if they do, they break no Law. But I dare be poſitive, that there is no Cuſtom, except what is obligatory by the Law of Nature, that is Univerſally received; but in different parts of the World different Cuſtoms have obtained, and even among the ſame Nations at different times different Practices, which are frequently changed, without any Violation of the Law of Nature: And there is nothing meerly poſitive, but where Precedents may be brought on both ſides, which ſheweth the thing may, or may not be done, without injury to the Law of Nations.

Among the Heads of the Poſitive Law of Nations, That concerning Ambaſſadors is reckoned one of the chiefeſt; Yet what is more different than the Cuſtoms of Nations, or the Opinions of Learned Men about thoſe Rights that belong to Ambaſſadors, further than they are deducible from the Law of Nature? by which Law the Perſons of Ambaſſadors ought to be inviolable, even when ſent to Enemies; becauſe Peace could not be made, or preſerved, or Differences compoſed, which the Law of Nature requireth ſhould be done, except thoſe that are ſent on ſuch Errands, ſhould not only be ſafe, but alſo be permitted to treat with Freedom, and procure as Advantageous Terms as they can, for the Intereſt of the Nation that imployeth them: What is more than this, or is not neceſſary for the Ends they are ſent, any Prince may refuſe it them, provided he be willing his Ambaſſadors ſhould be treated after the ſame manner; and not only to Ambaſſadors of Soveraign Princes, but to any that are ſent by private Perſons, (as by Merchants upon the account

account of Trade) if Princes will admit them to treat, they must allow them what is necessary in order to it. And further than this, nothing of certainty can be drawn from the Practice of Nations. Nay *Grotius*, who is the great Asserter of the Positive Law of Nations, in his Chapter *de legationum jure*, saith, that even this Question, Whether the Persons of Ambassadors are inviolable? cannot be determined by the Practice of Nations; *De non violandis legatis difficilior est quæstio & variè & à claris hujus seculi ingeniis jactata*, &c. and at last concludes, *Spectandum ergo quousque gentes consenserint, quod ex solis exemplis evinci non potest, extant satis multa in partem utramq; recurrendum igitur tum ad sapientum judicia tum ad conjecturas.* Where Nations have neither expresly declared, nor are there Examples enough whereon to found their tacit Consent, there can be no Obligation from the Practice of Nations, but from the Matter it self, as it is conducive to the Good of Societies; upon which alone the Judgment of wise Men, as well as all other Conjectures, must be founded.

What looks more like the Positive Law of Nations, than that general Custom of Princes having Persons of publick Characters perpetually resident in one anothers Kingdoms? Yet *Grotius* saith in the foregoing §. *Optimo autem jure possunt rejici quæ nunc in usu sunt legationes assiduæ, quibus quam non sit opus docet mos antiquus cui illæ ignotæ.*

To give but one Instance more, and that too out of *Grotius*, who does not pretend to prove any thing from the voluntary Law of Nations concerning this most comprehensive Question, *Quantum in bello liceat*, but has wholly recourse to the Law of Nature; lib. 3. chap. 1. *Quantum in bello liceat regulæ generales ex jure naturæ.* And §. 5. *Quid liceat in eos qui hostes non sunt aut dici nolunt, sed hostibus res aliquas subministrant? nam & olim & nuper acriter de ea re certatum scimus, alii belli rigorem alii commercio-*

rum

rum libertatem defenderint, &c. And adds, *Hanc autem quæstionem ad jus naturæ ideo retulimus, quia ex historiis nihil comperire potuimus eâ de re jure voluntario gentium esse constitutum.* If in these material Points, which constitute so great a part of the Law of Nations, nothing that is meerly positive can be deduced from the tacit Consent of Nations, it is very unlikely that any thing of that nature can be proved in Points of less importance.

From each of which Points, Examples, had it been necessary, might as easily have been produced. Nothing can more diminish from the Sacredness of the Law of Nations, than to allow it no other Foundation than the Practice of the generality of Soveraigns; who, like other Men, are governed by Passion, Interest, Ambition, Revenge, and the like; and who are so far from minding the general Good of Mankind, that they very often sacrifice the Happiness and Prosperity of their own Nation to these Passions. How many things are now looked on as lawful in War, and daily practised, which are against all Humanity as well as Christianity; which in former Ages were by several Nations esteemed a Violation of the Laws of Nations?

There is no Subject, about which there are more Mistakes, or which is more confusedly handled by Authors, than this of the Law of Nations; they referring many things to that Law, which are no part of it: even *Grotius* himself, who has writ the most accurately on this Subject, besides other lesser Errors, has a whole Chapter *de jure sepulturæ*, as a Part of the voluntary Law of Nations. The burying of the Dead is, I confess, an Office of Humanity, and a Matter of Decency; but I can see no reason why it should be reckoned as a part of the voluntary Law of Nations, more than wearing of Clothes, or twenty other things Mankind generally do, either out of Necessity,

Or

or Conveniency, or for other Reaſons than the voluntary Law of Nations, or upon the account of any tacit Agreement between them. Several err more groſly, miſtaking thoſe Privileges which the Roman Law allowed to Foreigners in common with their Citizens, for the Law of Nations, only becauſe the Romans call'd them *jus gentium*, to diſtinguiſh them from thoſe particular Privileges or Advantages the Citizens had above them, which they called *jus civile*: what they called the *jus gentium*, was as much a part of the Law of that Nation, as the *jus civile*; which no other Nation was obliged to obſerve, but might allow more or leſs Privileges to Foreigners or Citizens as they thought fit. Others (which Miſtake is moſt common) call That the Law of Nations, which is the Law of Nature properly ſo termed, and relates to particular Perſons, with reſpect to one another; or elſe they miſtake the Laws of different Countries, when they happen to be the ſame, for a part of the Law of Nations; which though they be the ſame in ſeveral Nations, yet they have not their Force and Authority from any tacit Compact, but becauſe the ſupream Powers in each Society have made them Laws, which any one of them may alter without any Violation of the Laws of Nations; becauſe every Nation is a compleat Body-Politick within it ſelf, and may make what Laws, appoint what Government or Governors, and manage their own Affairs within themſelves as they think fit.

The Laws of Nations relate to their mutual Commerce and Correſpondence, which cannot be maintained but by having recourſe to thoſe who have the Power of making Peace and War, and all other Contracts for the Nations they repreſent; whoſe Acts are the Acts of the whole Bodies, and bind the Members as much as if each particular Perſon had conſented. It is upon the account of the

Power

Power of making these Contracts, that the Governors of each Society are allowed above all others certain Prerogatives by other Nations, over whom they have no Authority, who are no otherwise or further concerned with them; but as they have the Power of making Contracts for the Nations they rule. As it is for their own Interest that private Men make Bargains with one another, so (as I have observed in another Essay concerning Obedience, *&c.*) the Correspondence that one Nation holds with another is for their own Good; and in their Commerce with one another, they look no further than who those Persons are that have the Power of obliging the Nation they have occasion to make use of. It is not material to them what Right they have to this Power; it is sufficient that the Nation then owns them, and have entrusted them with it. It would be an endless, as well as a useless Task, for Ambassadors before their Admission to prove the just Rights their Masters have to those Powers they are possessed of: and other Princes may well be ignorant of what does not concern them; who, if they have occasion to treat with any other Nation, must apply themselves to those (whatever Right they have to it) that are in possession of the Government. Would it not be ridiculous in the English, or any Nation, who propose any Advantage to themselves by it, to refuse to treat with the present Emperor of the Turks, and to allow him those Rights that belong to Soveraign Princes, because his deposed Brother may have a better Title? Did not the most considerable Nations of *Europe* court the Friendship of *Cromwell*; and the French King to obtain it, oblige the two late Kings, then in his Country, to retire from it, without being condemned by others, or even by Them? And did not all Nations with whom the late Protector had any concern, allow him both in matters of Peace and War, all those Rights

that

that belong to Sovereign Princes. No Prince is obliged to hold Correſpondence, but may refuſe to ſend or receive Ambaſſadors; as all Proteſtant Princes deny to hold any Correſpondence with the Pope, though he is a Sovereign Prince: yet if one Nation has any concern with another, they muſt allow the ſame Rights and Privileges to the actual Governor of that Nation, as they expect ſhould be payed to their own. And if a Nation be divided, by a part of them withdrawing their Obedience from the rightful Prince, not only other Soveraigns, but even their lawful One, if he has occaſion to treat with them either in Matters of Peace or War, muſt treat them after the ſame manner, as he expects to be dealt with himſelf.

All Leagues and Treaties are National; and where they are not to expire within a ſhorter time, though made with Uſurpers, will oblige legal Princes, if they ſucceed, and ſo *vice verſa:* and a League made with a King of any Nation, will oblige that Nation, if they continue free, though the Government ſhould be changed to a Commonwealth, becauſe the Nation is ſtill the ſame, though under different Governments. Which *Grotius* obſerveth, lib. 2. cap. 16. *Imo etiamſi ſtatus civitatis in regnum mutetur, manebit fœdus, quia manet idem corpus etſi mutato capite, & ut ſupra diximus, imperium quod per regem exercetur, non deſinet imperium eſſe Populi:* in whoſoever Hands they entruſt the Management of it, yet ſtill it is the *Imperium Populi*, the Empire of the People. The Leagues which Princes make with one another do not oblige them to one another, longer than they are in poſſeſſion of their Governments; becauſe the ſole Reaſon of Leagues and Contracts is upon the account of the Power each Nation has to afford mutual Aſſiſtance and Benefit to one another; which Reaſon ſtill continues, though the Perſon who was

entruſted with the Power of making them be changed; who then is no further concerned therein, than a Proctor is with a Cauſe after the Revocation of his Proxy.

Upon this Reaſon King *Charles* the Firſt, though he made a League, and confirmed it with an Oath, with the King of *Spain* expreſly as he was King of *Portugal*, did notwithſtanding immediately after receive two Ambaſſadors from the new King of *Portugal*, who had driven out the *Spaniard*; and this was not looked on at the Court of *Spain*, either as breaking his League or Oath.

All the Rights and Privileges Princes are allowed by foreign Nations, over whom they have no manner of Authority, is upon the account of the Power they have of making Contracts for the Nation they govern; which Power when they loſe, and no Nation is any longer obliged or concerned in their Actions, they have no more Right to theſe Privileges than they had before they had this Power. But becauſe the ſame intercourſe will always be neceſſary between Nations, and Leagues and Contracts muſt be made, which cannot be made with the whole Body, but only with thoſe who have the Supream Power, nor with them neither, except they be allowed thoſe Rights and Privileges the diſpoſſeſſed Princes had; therefore there is an abſolute Neceſſity of granting them the ſame; and the Others muſt loſe them with their Dominions, becauſe more than One at the ſame time cannot have the ſame Right, for the ſame Nation. And though the King of that Country, to which a diſpoſſeſſed Prince retires, allows him what Honours or Privileges he pleaſeth, as every Supreme Power is at liberty to act in his own Dominions as he has a mind to, and beſtow his Favours as he thinks fit; yet the Titular Prince has no Right by the Law of Nations to claim any of thoſe Privileges that belong to thoſe that have *ſummum Imperium*, or any More than

than what belong to other private Perſons. What Right can he claim by the Law of Nations, when no Nations are any way concerned in his Actions? All Nations, but his own, diſtinguiſhed him from others, upon no other account, but as he had the Power of making National Contracts. Which Power when he loſeth, the Reaſon of allowing him any particular Privileges above others, wholly ceaſeth. And his own Nation, when they have entruſted the Management of their Affairs in other hands, are no more concerned with him than Foreigners are; ſo that ſuch a Prince is wholly reduced to a private Eſtate, without a Kingdom, nay without a Country that he can call his Own, and at the beſt can be but eſteemed a Subject, during his ſtay, to the Government of that Society he retires to, becauſe there cannot be *Imperium in Imperio*, or more than one Soveraign in the ſame Society. Where he is ſo far from having a Power of making Peace or War, or any other National Contracts, that he cannot without leave ſend to Princes, or receive Any ſent by them, much leſs allow Them that are ſent thoſe Privileges which are due to Perſons of a Publick Character: and it would be unreaſonable that Soveraigns ſhould be obliged to allow thoſe Privileges to him, who is uncapable of returning the ſame. And it is evident, that Soveraigns have none of thoſe Reaſons to forbear exerciſing a Coercive Power over him, as they have over an Ambaſſador who, as *Grotius* ſaith, *cap. de leg.* if he commits *crimen atrocius, & ad publicum malum ſpectans, mittendus erit ad eum qui miſit, cum poſtulatout eum puniat, aut dedat.* But to whom can a diſpoſſeſſed King be ſent, or who will give ſatisfaction for any Crime he commits? Why may he not be puniſhed without Violation of the Laws of Nations, or Injury to any Nation whatever, ſince no Nation owns him ſo much as to be of their Body? Therefore the King

in whoſe Dominions he is, may, if his Crime deſerve it, puniſh him with loſs of Life, as Queen *Elizabeth* of bleſſed Memory, did *Mary* Queen of *Scotland*.

There is no Reaſon in Nature, either from other Nations, or from the Perſon himſelf, why he may not be puniſhed by that Government under which he lives, as well as any other that makes uſe of the Protection of it. For whoſoever makes uſe of the Protection of any Government, owns himſelf (as I think I have ſufficiently proved in my Eſſay above-mentioned) a Subject of that Government, and conſequently makes himſelf liable to be puniſhed if he tranſgreſs the Laws. And *Grotius* ſaith, *cap. de leg.* It is the Law of Nations that all, but Ambaſſadors, are Subjects to the Prince in whoſe Territories they are. His Words are clear, *Placuiſſe gentibus ut communis mos qui quemvis in alieno territorio exiſtantem ejus loci territorio ſubjicit, exceptionem pateretur in legatis, ut qui ſicut fictione quadam habentur pro perſonis mittentium (ſenatus faciem ſecum attulerat, auctoritatem reipublicæ, ait de legato quodam* M. Tullius) *ita etiam fictione ſimili conſtituerentur quaſi extra territorium:* It is only their mutual Good that hinders Princes from exerciſing this Right over Ambaſſadors, becauſe each Prince expects the ſame for his Own in Another's Territories; but there can be no ſuch Reaſon urged in favour of a diſpoſſeſſed King, who carries no publick Authority with him; or in what other Country ſhall he be ſuppoſed to be in, ſince he has no Country he can call his own?

Having proved in general, that a Prince that has no longer the managing the Affairs of a Nation, has no Right to any of thoſe Privileges that belong to them that have *ſummum Imperium*; and therefore ſuch a Prince being fallen from a publick to a private Condition, and under the Power and Government of another, can have no more Right than any

other

other private Perſon to grant Commiſſions to private Men of War to diſturb the Trade and Commerce of any Nation; and that they that act by his Commiſſion may be dealt with, as if they acted by their own, or the Authority of any private Perſon; becauſe there is no manner of inconvenience which will happen upon a private Perſon's granting ſuch Commiſſions, but the ſame will happen, if a Prince grants them after he is reduced to a private Condition, they being both then in the very ſame Condition.

What other way have Nations to ſecure their Trade, or hinder their Ships or Goods from being taken, but by treating them as Pirates who Rob by ſuch a Commiſſion? There is no way of making a Titular King weary of granting ſuch Commiſſions, as long as he can find People willing to accept and act by them. Nothing can oblige him, who runs no riſque of loſing any thing, but may get a conſiderable Booty by what his Privateers take, as well as diſturb and moleſt his Enemies, to forbear granting ſuch Commiſſions. No Repriſals to be made, becauſe he has no Ships to loſe but thoſe of the Privateers, whoſe Intereſt it is that ſuch Robberies ſhould be continued. He has no Trade or Commerce to be ruined. There is no way of making him deſiſt by invading his Territories, ſince he has none to be invaded. In ſhort, he has nothing to loſe by Sea or Land, and by conſequence no way of making him weary of eternally granting ſuch Commiſſions. Therefore Nations have no other way to hinder the diſturbing their Commerce, but by uſing the utmoſt Rigor againſt ſuch as accept his Commiſſions, that by the terror of the Example they may fright others from attempting the like.

What if ſuch a Prince ſhould grant Commiſſions to ſeize the Ships and Goods of all or moſt Trading Nations;

ons; which may eaſily be ſuppoſed, ſince he may get a conſiderable livelihood by ſharing the Spoil with his Privateers; who if they were to be treated as Enemies, out of hope of Booty, would in mighty Numbers infeſt the Seas. Would it not be madneſs in thoſe Nations not to make uſe of the utmoſt Rigor to ſecure their Ships and Trade? And if ſeveral Nations may uſe this Method, why may not any ſingle one, ſince any one Nation has the ſame right to ſecure their Trade, as any Number whatever? But ſuppoſing he ſhould grant Commiſſions to take the Ships but of a ſingle Nation, yet in effect it would be to grant a general Licence to rob; becauſe thoſe who are ſo commiſſioned, would be their own Judges of whatever they took, whether it were lawful Prize or not; becauſe in another Princes Territories whither the pretended Prizes muſt be brought, the ouſted Prince could not pretend to ſo great a Power, as to erect a Court of Judicature to judg according to the Maritime Laws, concerning the Ships and Goods that are taken: How can he whoſe very being in a Country is precarious, and may be baniſhed every moment, claim a right to a power of Life and Death, or to force Witneſſes to give attendance, and all other things that are neceſſary for ſuch a Court? Or how can he be able to reſtore Ships, though never ſo unjuſtly taken, that are in the Ports and Cuſtody of another King?

It is true, Soveraigns have ſometimes forborn to puniſh a Titular King for privately deſtroying a Domeſtick; but this is no Right he can pretend to by the Law of Nations, but only by the Permiſſion of that King in whoſe Dominions he is. It was uſual for the Supreme Powers in many Nations to allow Maſters a power of Life and Death over their Servants; inſomuch that *Caius* Inſt. *lege de his qui ſui juris vel alieni*, ſaith, *Dominorum poteſtas juris gentium eſt, nam*

nam apud omnes peræque gentes animadvertere poſſumus Dominis in ſervos vitæ neciſq; poteſtatem fuiſſe. And by the *Roman* and *Carthaginian* Laws, even Parents had the ſame power over their Children; and in ſeveral Countries at preſent a private Perſon in many caſes, particularly that of Adultery, may kill the Adulterer and his Wife too, if he takes them in the Fact, without being puniſhed for ſo doing.

The Ambaſſadors of Sovereign Princes, as *Grotius* obſerves, *l.* 2. *cap.* 3. have by the Law of Nations no right to exerciſe Juriſdiction in their own Families; *ipſe autem legatus an Juriſdictionem habeat in familiam ſuam, & an jus aſyli in domo ſua pro quibuſvis eo fugientibus, ex conceſſione pendet ejus apud quem agit? iſtud juris gentium non eſt.* If the Ambaſſadors of Sovereign Princes (who, as he ſaith, *fictione quadam habentur pro perſonis mittentium*) cannot pretend to this Power, there is infinitely leſs Reaſon for a Diſpoſſeſſed King to Claim a Power that is ſo much greater, *viz.* that of erecting Publick Courts of Judicature.

Therefore his granting Commiſſion to Privateers, is but granting them Authority to rob whom they have a mind to; who being Judges in their own Cauſe, cannot be ſuppoſed, but will judge all that comes to their Net to be Fiſh: and Nations have no reaſon to take notice of his Commiſſion, which can have no manner of effect; ſince he that grants it, is no ways able to hinder them that take it, from acting as they have a mind to; nor is he able to puniſh them, if they never ſo much exceed the bounds of it; nor can he reſtore Ships, though never ſo unjuſtly taken; nor is he able to give any ſatisfaction for any Injuſtice his Privateers ſhall commit. So that it is evident it is againſt the good of Mankind, and conſequently the Law of Nations, to allow a Prince that is reduced to a private Condition, a Right to grant ſuch Commiſſions.

But

But it may be ſaid, that the Government under which this King is, may give him ſufficient Power to judge in theſe matters.

This Argument will as well hold for any private Perſon whatever, becauſe the Government may allow him the ſame Power as it can any exiled Prince.

The Laws of Nations are built upon Certainties: and if a Perſon has no right to a Power, to which certain Privileges are annexed, he has no right to the Privileges, though it were poſſible that a King may allow him ſuch Privileges, which he can enjoy but during his pleaſure; and other Nations, as they are preſumed to be ignorant of this, ſo are not obliged to take notice of it: Nor can there be any inſtance, where a diſpoſſeſſed Prince was allowed to erect a Court of Judicature in another King's Dominion; it is erecting *imperium in imperio*, and none but he that has Supream Power, can be a Supreme Judge, and all inferior ones act as his Miniſters, and muſt be ſubject and accountable to him.

Perhaps it may be ſaid, The King himſelf, into whoſe Dominions the Prizes are brought, may judge concerning them.

But what if he will not? he is not obliged, nor can he have a right to judge or puniſh thoſe that acted, not by his, but another King's Commiſſion for what they did *ſuper altum Mare*; for he cannot have a right to puniſh them, except they are his Subjects, even whilſt they acted by Another's Commiſſion: and the ſame reaſon that makes them his Subjects, will make the exiled King ſo too; and conſequently a private Perſon, without Power to grant Commiſſions to his Fellow-Subjects.

All Authors both Modern and Ancient who have written on this Subject, have eſteemed none Enemies but thoſe that have *ſummum imperium*, and all others either Robbers,

or

or Pirates. And *Albericus Gentilis*, l. 1. *De jure belli & pacis*, cap. 1. and *Grotius*, l. 3. cap. 3. do define an Enemy to be one, *qui habet Rempublicam, Curiam, Ærarium, conſenſum & concordiam civium & rationem aliquam, ſi res ita tulerit, pacis & fœderis*: which in other words is but *ſummum imperium*, becauſe the Supreme Power in any Society muſt have all theſe. And this they prove was looked on as the Definition of an Enemy, even in *Cicero*'s time, who quotes it, *Philip.* 4. as a known Definition or Deſcription of an Enemy. And I believe there is nothing in which Nations ſo unanimouſly agree, as in eſteeming none but him that has *ſummum imperium* an Enemy, and all others Robbers or Pirates; and there can be no inſtance given, where any though at firſt they were Robbers, Pirates, Rebels, *&c.* yet when they had Dominions, and poſſeſſed *ſummum imperium*, were not treated as Enemies. St. *Auſtin de Civ. Dei*, l. 4. c. 4. ſpeaking of Robbers, *Hoc malum ſi in tantum perditorum hominum acceſſibus creſcit, ut & loca teneat, ſedes conſtituat, civitates occupet, populos ſubjuget, Regni nomen aſſumet.* And the beginning of moſt of the great Empires were not much better: whatever any were at firſt, yet when they had formed themſelves into Civil Societies, where Foreigners as well as Subjects might have Juſtice adminiſtred, then they were looked on as Nations and Civil Societies; and in their Wars with other Nations, uſed as Enemies. But until any Number of Men were a Civil Society, and did aſſociate for the ſake of Laws, Juſtice, Government, *&c.* they were eſteemed as Pirates and Robbers: ſo all Authors do agree, that thoſe, *Qui civitatem non faciunt ſunt piratæ vel latrones*; and are ſuppoſed to aſſociate *Scéleris cauſa*, for the ſake of Piracy or Robbery, or ſome other wicked end. But if, as *Grotius* obſerves, *l. 3. c. 3.* a Change happen, and they form themſelves into a Civil Society, then they have all the Rights that

belong to other Civil Societies, his words are theſe, *Poteſt tamen mutatio incidere non in ſingulis tantum, ſicut Iephtes, Arſaces, Viriatus, ex prædonum ducibus juſti duces facti ſunt, ſed etiam in cœtibus, ut qui prædones tantum fuerint aliud vitæ genus amplexi, civitas fiant.* So of later Years *Argiers, Tripoly, Tunis,* though at firſt but Neſts of Pirates, and aſſociated for the ſake of Spoil and Plunder, yet as ſoon as each of them had the face of a Republick, they were eſteemed as juſt Enemies, and had all thoſe Privileges allowed them that are due to Sovereign States.

Albericus Gentilis, l. 1. c. 4. ſeems to be of another Opinion; and after he has reckoned ſome few whom he is forced to allow, that they from Robbers became Enemies, ſaith, it was only the Cauſe that made them ſo. *Quodque fiet non tam juſti exercitus auctu, & urbium interceptu, ut ſcriptores iſti, & alii Hiſtorici credere videntur, quam adeptione publicæ cauſæ.* However he is of this Opinion himſelf, yet he is forced to confeſs, that all the Antient Hiſtorians and other Writers were of a different Opinion. If he mean by a *Publick Cauſe*, a juſt Cauſe of War, and none but thoſe that have ſuch a Cauſe ſhould be treated as Enemies, all Mankind would treat one another as Robbers and Pirates; becauſe each Party pretend their Enemies have no juſt Cauſe of War, and there being no Superior to judge, each ſide muſt judge for themſelves; and where there is no Common Judge, in which both ſides will acquieſce, the pretence of Right can be urged to no purpoſe, ſince each ſide pretends to be in the right: ſo that there is a neceſſity for thoſe that have *ſummum imperium*, whatever the cauſe of the War be, to uſe one another as Enemies; and thoſe that have acted otherwiſe, have been eſteemed by the reſt of Mankind as infringers of the Law of Nations. It is true, ſome, eſpecially the great Conquerors, as *Alexander*, and the *Saracens*, as he obſerveth,

veth, have been called Robbers, and really were ſo; for whoever without a juſt Cauſe, invadeth his Neighbours Rights, as they did, is a Robber; yet they were always treated as juſt Enemies, as were the *Saracens* by the Chriſtians. Nay, *Grotius* gives inſtances of ſeveral Nations, who without any diſtinction exerciſed Piracy, yet were allowed the Rights of Enemies, becauſe they were a People: *Tantum diſcrimen eſt inter populum, quantumvis ſceleratum, & inter eos, qui cum populus non ſunt, ſceleris cauſa coeunt.* If *Gentilis* by a Publick Cauſe, means ſome National Cauſe, and that the War, to make it juſt, muſt not be for private Cauſes or by-Ends, but for the ſake of the People; all that have *ſummum imperium*, what way ſoever they get it, as it is their Duty to protect thoſe that are under them, and make War with thoſe that endeavour to oppreſs them, will have the ſame Publick Cauſes of making War as any Kings whatever. As *Arſaces* whom he mentions to have a Publick Cauſe, had none to withdraw his Obedience from the *Macedonians*, who had been ſo long time Lawful Kings of *Perſia*; yet after he had made himſelf Maſter of *Perſia*, might have a Publick Cauſe, upon the account of that Nation, of making War. The ſame may be ſaid of all other Uſurpers.

As Robbers and Pirates become juſt Enemies, when they form themſelves into a Civil Society; ſo a King that loſeth his Empire, and can no longer protect People, or adminiſter Juſtice, dwindles into a Robber or Pirate, if he grants Commiſſions to take the Goods or Ships of any Nation; and they that accept Commiſſion from him, are preſumed to aſſociate *Sceleris cauſa*, and cannot be reckon'd as Members of a Civil Society; ſince he by whoſe Commiſſion they act, nor any other of their number, can adminiſter Juſtice, or do any of thoſe things that are eſſential to a Civil Society: there is none amongſt them, let

them break the Laws of Nations, or any Other Laws to punish them; or let them be never so injurious to other Nations, there is none to make Satisfaction or do Justice on the Offenders; and is there not all the reason in the World, that Nations should do themselves Justice in punishing the Criminals according to their demerits?

Whoever pretends to the Dignity of being esteemed an Enemy, must have a Power of making Peace and War; *Hostes sunt, ait* Sempronius, *qui nobis aut quibus nos bellum decernimus.* So *Ulpianus*; *Hostes sunt quibus bellum publice Populus Romanus decrevit vel ipsi Populo Romano, cæteri latrunculi vel prædones appellantur.* And *Grotius* saith upon quoting these Authorities, lib. 3. cap. 3. *Sub exemplo Populi Romani quemvis intelligi qui in civitate summum Imperium habeat:* There is no Government declareth War against a private Person, though he retains the Title of a publick One; and it would be ridiculous for a private Person that has no certain Habitation, but is in a manner a Vagabond, to pretend to declare War, since he cannot do it for any Nation, but only for himself.

The English have neither Peace nor War with the late King, and look on him as a private Person incapable of making either; and to allow him now any of those Rights that belong to publick Persons, would be in a manner acting inconsistent with themselves, and contradicting their former Declarations.

As he that is reduced to a private Condition, has no Right by the Law of Nations to be treated as an Enemy; so on the contrary, whosoever has *summum Imperium*, because the general Good of Nations requires it, and consequently it is a part of the Law of Nations, must have a Right to be treated as an Enemy; nay, it is the Interest of the adverse Party, *flagrante bello*, to treat even Rebels so; because as they use them, so they must expect to be used

uſed themſelves. The Pretence of Right (as I have already ſaid) where there is no Superior to judg between the contending Parties, in whoſe Determination both Sides will acquieſce, is to no purpoſe. If one Side call the other's taking up Arms Rebellion, they on the other hand term it a juſt War in defence of their Rights and Privileges; and will be ſure upon all Occaſions to return like for like: So that it is plain, it is the mutual Good of both Parties to treat one another as Enemies. So in the Civil Wars of *England* and of *France*, and of the Romans, they treated one another as Enemies. It is true, that in the Civil Wars of the Romans, there was not as in foreign Wars, any uſe of the *Poſtliminium*; nor did they triumph after Victory. But theſe were Cuſtoms proper to that State, and no part of the Law of Nations. In the beginning of the Civil Wars in the *Low-Countries*, the haughty Spaniard at firſt uſed the Hollanders as Rebels, but he quickly was weary of that Sport, and conſented to a Chartel.

For the ſame Reaſon, the preſent Government, during the War, treated their rebellious Subjects in *Ireland* after the ſame manner: For as long as they had an Army in the Field, and were Maſters of fortified Towns, they were eſteemed and uſed as Enemies: But what Pretence can any of that Party have of being treated ſo now?

Would it not be very abſurd in the Tories, though they plundred Paſſengers, and robbed Market-people by the late King's Commiſſion, to expect to be uſed as Enemies? Is there any more Reaſon they ſhould be more favourably dealt with for robbing at Sea by his Commiſſion, conſidering they have no Fleet, no Ports, nor Harbors?

But it may be urged in behalf of thoſe that have the late King's Commiſſion, that they ought to be uſed as Enemies, becauſe if they are uſed otherwiſe, all that they take muſt expect to be dealt with accordingly.

Anſw.

Anſw. The ſame Argument will hold for all other Pirates and Robbers, who may uſe all that fall into their hands, as they themſelves are uſed; and the Conſequence of granting them ſuch Uſage would be, that the Seas would quickly be full of Pirates, and the Land of Robbers. If it were for their Intereſt, there's no doubt Pirates would ſerve all they take ſo; but they know if they did, they ſhould not only miſs of the Booty they might otherwiſe expect by Peoples not being ſo much on their guard, but that moſt effectual Means would be taken to extirpate them.

But if it ſhould happen to be againſt the Publick Good (of which the Government is the Judg) to puniſh them as Pirates, there is no doubt but they ought to be dealt with more mildly; ſo all other Criminals ought to be ſpared, when it is againſt the Publick Good to puniſh them.

Obj. It may be ſaid, If a King is unjuſtly depoſed, he has ſtill a Right to his Kingdom, and conſequently to all that is in order to recover it.

Anſw. All Nations, except his own, allowed him theſe Privileges and Rights upon no other account, but as all Buſineſs of Peace and War, and Commerce, that concerned his Nation, was managed by him: what his Right was to that Power, That depended upon the Laws of his Country, with which they were no way concerned; therefore when he loſt that Power, he with it loſt all the Right he had of claiming from them any Privileges above other Perſons, and conſequently his Pretence of Right can be no Argument for them not to treat his Privateers as Pirates. As for his own Nation, they have already adjudged he has no Right to command them, and have placed the Adminiſtration of their Affairs in other Hands: ſo that the Argument drawn from a pretended Right that is not owned by the Nation that depoſed him, can ſignify nothing

nothing either to Foreigners, or to them who have then the ſame Reaſon, as all other Nations, to condemn as Pirates all that act by his Commiſſion.

In ſhort, let a Prince's Right be what it will, if the utmoſt of his Power extends only to the giving Commiſſions to a few People, whom he can perſuade to ſet out Veſſels at their own Charge, to diſturb the Trade of a Nation; which can only tend to exaſperate and vex them; That cannot, in common Underſtanding, be reputed a juſt Deſign to recover his Kingdom, or to conquer his Enemies; but only a Pretence to let thoſe People that act by his Commiſſion, inrich themſelves by exerciſing Piracy; which is ſuch an odious thing, that Nations cannot be too careful in puniſhing whatever tends that way. Beſides, the Laws of Nations reſpect the general Good of Societies more than the Right of any particular Perſon; who, to ſpeak properly, can have no Right when it is inconſiſtent with the Good of the Society, becauſe a particular muſt always give place to a general Good; and the Intereſt of a King, when he has no longer the Management of the Affairs of any Nation, is no more ſacred than that of any other private Perſon, who by Nature is his equal: it was only the Office which is ſacred, becauſe it is ſo neceſſary for the Good of Mankind, that made the Difference: which when he is no longer poſſeſſed of, he is but upon the ſame Level with the reſt of Mankind; and then the Peace and Quiet, or Trade and Commerce of a Nation ought not to be diſturbed more for his, than any other particular Perſon's Intereſt. And People, who have a Right even to the Lives of their Enemies, uſe them, when the mutual Good of Societies do not forbid it, after the ſame manner as they do Pirates and Robbers; and they uſe all Spies, and thoſe that privately attempt the Lives of their Enemies, whatever Right the Prince has that employs them, as Pirates; the

The Pretence of his Right who employs them, will be no manner of Plea to prevent their Execution: And the ſame Reaſon, the Good of Societies, does more ſtrongly require the putting thoſe to Death that rob by the Commiſſion of any private Perſon whatever.

Beſides theſe Reaſons, which I think are ſufficient to prove them who were taken acting by the late King's Commiſſion, Pirates, there is another unanſwerable One, from the Perſons who accepted the Commiſſion: Who being their Majeſties Subjects, (and which the Queſtion that was put to the Civilians juſtly ſuppoſeth) were morally incapable to receive ſuch a Commiſſion; it was not in their Power to take a Commiſſion from any King whatever to invade, in a hoſtile manner, the Ships and Goods of their Fellow-Subjects.

The accepting the Commiſſion was Treaſon, and no Commiſſion whatever can authorize People to commit Treaſon; ſo that the Commiſſion was null and void as well upon Their account that received it, as His that granted it.

Theſe Reaſons, or at leaſt what is moſt material in them, the Heads of them (I will not pretend they were then as fully and largely handled as they are here ſet down) were urged either by Dr. *Littleton* or my Self: He did not, upon a Queſtion where ſo much could be ſaid, leave out, as it were on purpoſe, what was moſt material, nor did not, as the ſham-Account reports, only ſay, That the late King had no right to grant Commiſſions, becauſe he had no Treaſury or *Ærarium*, and becauſe there was no War between him and *England*, or ſomewhat to that effect: Nor did I (as the Account will have it) without offering at any Reaſons my ſelf, aſſent to what he ſaid, but not only then, but (ſince I am in a manner forced to ſay ſo much) when

I gave my Opinion in Writing, I made uſe of what I thought moſt material in theſe Arguments.

It is a great Sign of the Weakneſs of their Cauſe, as well as their Diſingenuity, that they dare not repeat the whole Matter of Fact; but only relate ſo much of the other ſide, as they think may ſerve to give a better Gloſs to what they, without any reſpect to Truth, have thought fit to divulge: but they were under a kind of neceſſity of ſo doing, (and which is the only Excuſe the Matter is capable of) ſince they had no other way of making what they pretend was ſaid by them appear tolerable, but by repreſenting what was ſaid by thoſe of the contrary Side (if it were poſſible) more abſurd: And it is no wonder where People have neither Law nor Reaſon on their ſide, that they have recourſe to Lies and Calumnies, the uſual Arts of that Party, and the only Props they have to ſupport their ſo often baffled Cauſe.

But to return; The Occaſion of ſending for the Civilians, after ſome of them that were conſulted had given their Opinions in Writing, was, as the Lords told Sir *T. P.* and Dr. *Ol.* (who had declared that they were not Pirates, without offering to ſhew the leaſt Reaſon why they were of that Mind) to hear what Reaſon they had to offer for their Opinion.

Then Sir *T.* P. ſaid, It was impoſſible they ſhould be Pirates, for a Pirate was *hoſtis humani generis*, but they were not Enemies to all Mankind, therefore they could not be Pirates: Upon which all ſmiled, and one of the Lords asked him, Whether there ever was any ſuch thing as a Pirate, if none could be a Pirate but he that was actually in War with all Mankind: To which he did not reply, but only repeated what he had ſaid before. *Hoſtis humani generis*, is neither a Definition, or as much as a Deſcrip-

tion of a Pirat, but a Rhetorical Invective to ſhew the Odiouſneſs of that Crime. As a Man, who, tho he receives Protection from a Government, and has ſworn to be true to it, yet acts againſt it as much as he dares, may be ſaid to be an Enemy to all Governments, becauſe he deſtroyeth, as far as in him lieth, all Goverment and all Order, by breaking all thoſe Ties and Bonds that unite People in a Civil Society under any Government: So a Man that breaks the common Rules of Honeſty and Juſtice, which are eſſential to the well-being of Mankind, by robbing but one Nation, may juſtly be termed *hoſtis humani generis*; and that Nation has the ſame right to puniſh him, as if he had actually robbed all Nations.

Doctor *Ol.* ſaid, that the late King, being once a King, had by the Laws of Nations a Right to grant Commiſſions; and that though he had loſt his Kingdoms, he ſtill retained a right to the Privileges that belong to Sovereign Princes. It was asked him by one of the Lords, whether he could produce an Author of any Credit, that did affirm, that he that had no Kingdom, nor right to any, could grant Commiſſions, or had a right to any of thoſe Privileges, that belong to Sovereign Princes? and that no King would ſuffer thoſe Privileges to be paid to *Chriſtina*, when ſhe ceaſed to be Queen of *Sweedland*; and that it was the judgment of all the Lawyers, that ever mentioned that Point, that ſhe had no right to them; and he did hope, that thoſe that had ſworn to Their preſent Majeſties, did not believe the late King had ſtill a right: and that that Point was already determined, and would not be ſuffered to be debated there. To which he anſwered, that King *James* was allowed very lately the Rights of a King, and that thoſe that acted by his Commiſſion in *Ireland* were treated as Enemies, and People that followed his Fortune, might

ſtill

ſtill ſuppoſe he had a right, which was enough to excuſe them from being guilty of Piracy.

One of the Lords then demanded of him, if any of Their Majeſties Subjects, by virtue of a Commiſſion from the late King ſhould by force ſeize the Goods of their Fellow-Subjects by Land, whether that would excuſe them from being guilty at leaſt of Robbery? If it would not from Robbery, why ſhould it more excuſe them from Piracy? To which he made no Reply. Then the Lords asked Sir *T. P.* and him, whether it were not Treaſon in Their Majeſties Subjects, to accept a Commiſſion from the late King to act in a hoſtile manner againſt their own Nation? which they both owned it was, (and Sir *T. P.* has ſince, as I am informed, given it under his Hand, that they are Traitors.) The Lords further asked them, If the ſeizing the Ships and Goods of Their Majeſties Subjects were Treaſon, why they would not allow it to be Piracy? becauſe Piracy was nothing elſe but ſeizing of Ships and Goods by no Commiſſion; or what was all one, by a void or null one, and ſaid that there could be no Commiſſion to commit Treaſon, but what muſt be ſo: To which they had nothing to reply, only Dr. *Ol.* (not by way of Anſwer to one of the Lords, who, as the Jacobitiſh Account ſuppoſeth, made uſe of it as an Inſtance for the other ſide) pretended to quote a Precedent, which he ſaid came up to the preſent Caſe, about *Antonio* King of *Portugal*, who (as he ſaid) after he had loſt his Kingdom, gave Commiſſions to Privateers to ſeize upon all Spaniſh Veſſels, whom, as the Spaniards met with, they hanged as Pirates; (ſo far his Precedent is againſt him) but an Author without naming him, was of Opinion, as he ſaid, that if *Antonio* had ever been a rightful King, that then the Spaniards ought not to have treated thoſe, that acted by his Commiſſion, as Pirates. This was all that was ſaid by the

Doctor in behalf of the late King's Privateers; upon which I must beg leave to make a few Reflections. As to those Privileges which were allowed the late King in *Ireland*, they were not allowed him upon the account of any Right, nor was it an owning that he had any Right to that Kingdom, but barely as he was in Possession; for then he had *Rempublicam*, *Curiam*, &c. and consequently a Right to be treated as an Enemy; and not only he, but whoever had been in Possession would have had a right to have been used after the same manner, and is no more than what is practised in all Civil Wars, where there are just Forces on either side. These Privileges being allowed him when he was a publick Person, and in possession of a Kingdom, could be no just reason to induce any to imagine that they would be permitted him when he was reduced to a private Condition; much less is it such a Presumption as is sufficient to excuse them, who acted by his Commission, from suffering as Pirates. The very taking a Commission from him, after he was reduced to a private Condition, to act against their own Nation, was a Demonstration that the Government was no longer in his, but other Hands, who could not reasonably be presumed would allow that he had still any Right, or that they that acted by his Commission should be dealt with as if he still had a Right; but that they should be used as if they acted by no Commission, or what is all one, a null or invalid one. Their pretending to believe he has still a Right, is no more an excuse in the Case of Piracy, than of Treason, which every Traitor may pretend to.

As to the Story of *Antonio*, the Doctor is (to suppose no worse) abominably mistaken in the very Foundation; for they that suffered by the Spaniards as Pirates, were French, who had not their Commissions from *Antonio*, but from

from their own King, as *Albericus Gentilis*, who mentions this Story, *Lib.* 1. *cap.* 4. ſaith, *At ipſa Hiſtoria vincat eos non fuiſſe Piratas, per literas quas Regis ſui oſtendebant, cui Regi ſerviebant, non Antonio, etſi maxime pro Antonio, quod illos non tangebat.* And *Coneſtaggius*, who is the Hiſtorian he refers to, and who has given an excellent Account of that War, ſaith it was the Royal Navy of *France* (which is very improbable did act by any Authority but that of the French King's) ſet out, as he words it, *Regiis ſub Auſpiciis*, with which the Spaniſh Fleet engaged, and had the good fortune, after a long and bloody Fight, to rout it, and took above five hundred Priſoners, of which almoſt the fifth part were Perſons of Quality, whom the Spaniſh Admiral was reſolved to ſacrifice as Pirates, becauſe the French King, without declaring War, had ſent them to the Aſſiſtance of *Antonio:* Againſt which Proceedings the Officers of the Spaniſh Fleet murmured, and repreſented to their Admiral, that they were not Pirats, becauſe they had the French King's Commiſſion; but That they chiefly inſiſted on, was the ill Conſequence it would be to themſelves, who, if they fell into the hands of the French, muſt expect the ſame Uſage. As to the French King's aſſiſting *Antonio* without declaring War, they ſuppoſed, that before the Sea Fight, the two Crowns might be ſaid to be in a State of War, by reaſon of frequent Engagements they had in the Low-Countries. This is the Account *Coneſtaggius* gives of it, which, how little it is to the purpoſe the Doctor quoted it for, is ſo viſible, that there is no need of any words to ſhew it. But granting (as the Doctor ſuppoſeth) that *Antonio* never had any Right, or at leaſt, the Spaniards would never allow he had any, yet it is evident from the Hiſtorian, that they allowed him, during Poſſeſſion, the ſame Privileges as the late King had during the War in *Ireland:* And if the Spaniard, by the Law of Nations,

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after *Antonio* was driven from his Kingdom, might treat those that acted by his Commission as Pirates, why may not the English deal after the same manner with those that act by the late King's Commission, since they look on him to be in the same Condition as the Spaniards did on *Antonio*, without a Kingdom, or Right to one? What difference can That make, that one had never a Right, and the other, though he had once a Right, has lost it?

These two Civilians, I believe, are the only Persons pretending to be Lawyers, that are of Opinion, that a King without a Kingdom, or Right to one, has by the Law of Nations a Right to grant Commissioners to Privateers, especially if they are Subjects (as they have acknowledged it) to that King, against whom, they by their Commissions are to act. Upon what account can such a Person claim these Privileges? or for what Reason should Mankind pay them to him, more than to other private Persons? Are these Privileges like the Charms, or indelible Characters, the Papists say, are inseparable from the Persons of their Priests? which, whatever it be in Ecclesiasticals, is no small Bigotry and Phanaticism in Civil Affairs. And it is the height of Folly, Madness and Superstition, to believe that the People, who have entrusted some one amongst them with Power for no other end but for protecting them, can upon no account whatever resume it.

To speak somewhat against this Notion, cannot be unseasonable or impertinent, because it is not only the Foundation of these false Notions which I endeavour to confute, but of almost all others that concern the Rights of Sovereigns.

The only innate Principle in Man is to seek his own Happiness, and consequently it is his Duty to pursue it; otherwise God would not have imprinted it so deeply on his Mind, that it is impossible for him not to desire it: and

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it is the Source of all his Actions, and the Foundation of his Duty to God and to Man; there being no Reaſon why a Man ſhould be obliged to do any thing, that no way promotes his Happineſs; which, as to this Life, conſidering his Weakneſs and Infirmities, he is not able to procure, without the Aid and Aſſiſtance of others; which, as the only way to obtain, he ought to be as ready to aſſiſt them, and do by them as he expects they ſhould do by him: and, as it is evident, the Duty Men owe to one another, tends to the Happineſs of each individual Perſon, ſo the neglect of it would be to the Loſs and Detriment of each particular: and the more any one is obliged, the more zealous he ought to be to make ſutable Returns; becauſe there is no Vertue that more encourageth People to do Good to one another, and conſequently is more beneficial to Man, than Gratitude. And this is the Reaſon of the Duty that Children, for the ſake of their Being and Education, owe to their Parents. The Relation between Parents and Children, is called a Natural Relation, becauſe it does not come by Compact and Agreement, as all others do, which Men enter into for their own ſakes; and where-ever they oblige themſelves to ſerve others, either by the Labour of the Mind or Body, it is for ſome ſutable Return: and in all Relations of Life, there are reciprocal Duties; for the ſake of which alone, Men entred into them, and conſequently deſigned to oblige themſelves no longer to them, than they receive theſe Returns. It is repugnant to that natural Equality that is amongſt Men, that all ſhould be due of one Side and nothing of the other: In all Relations the Duties are conditional, and can oblige no longer than they are performed on both ſides; becauſe each Party would not have bound himſelf but for the ſake of the Return. Where Numbers enter into any Relation with a ſingle Perſon, as when they engage

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to pay him Obedience, there it is moſt evident that they would never part with their Liberties, and give to a ſingle Perſon ſo great Power over them, but for the ſake of ſome ſutable Return; which can be no other than the Protection they receive by Government, which was the ſole Motive, Reaſon and Deſign of their becoming Subjects; nor can they be preſumed to intend any thing but their common Good, nor to pay Obedience upon any other Terms or Conditions, but for the Protection they are to receive: nay, had it been poſſible for Men to deſign it, they were morally incapable of binding themſelves contrary to their Common Good and Proſperity. Though Protection cannot be had without Obedience, yet Obedience is only the Means, and in order to Protection; which is the End for which alone Obedience is due; and where that End cannot be had, all Ties are abſolutely broken. And this has been the Senſe and Practice of Mankind, who have always ſubmitted to new Governors when their old Ones became uncapable to protect them: But the Reaſon is much ſtronger, when inſtead of protecting, they deſign to oppreſs and ruin them; then their own Good, which at firſt was the ſole Reaſon of their Obedience, does as much oblige them to oppoſe them, as ever it did to ſubmit to them.

The Doctrine of Abſolute Obedience is inconſiſtent with the Goodneſs of God, and the Love he has for Man; and is deſtructive of the End, Intent and Deſign of God's Laws, which is Man's Happineſs. For God, who is infinitely happy in himſelf, could have no other Motive but Man's Happineſs in thoſe Rules he has given him to walk by; and for that Reaſon has made it a Duty in him to help the Poor and Miſerable, relieve the Oppreſſed and Diſtreſſed, and do all manner of Kindneſſes and good Offices to one another. Can it then be preſumed, that he required Obedience to

Arbitrary

Arbitrary Power, which brings Poverty, Miſery and Deſolation on a Nation. If it be Duty to relieve the Poor and Oppreſſed, it muſt as much ſo, to hinder People from falling into that miſerable Condition, which they cannot prevent except they have a Right to oppoſe Arbitrary Power. And if it be a Duty to promote the Publick Good, which they cannot do if they are obliged to ſubmit to Arbitrary Government, it muſt be their Duty to oppoſe it.

In ſhort, there is no Duty that a Man owes to his Neighbour, or himſelf, but does oblige him to oppoſe Arbitrary Government; and ſo does that Honour and Duty which Man owes to his Maker, which cannot more be ſhown, than in imitating him, by promoting the Good and Happineſs of his Fellow-Creatures: *He that does not love his Brother whom he has ſeen, cannot love God whom he has not ſeen.* But the endeavouring to enſlave his Brother, is no Argument of any great Love he bears him. Abſolute Obedience tends to the Diſhonour of God, as it naturally tends to introduce groſs Ignorance and Superſtition, which perhaps is the chief Reaſon that ſome Men ſo highly promote it, becauſe then they may be the better able to impoſe what ſelfiſh Doctrines they pleaſe, and tyrannize over the Conſciences of their Brethren.

The promoting Abſolute Obedience, is a much greater Crime than the encouraging any Rebellion whatever; becauſe a Civil War, though during the time it laſts is very ſharp, yet it cannot, eſpecially in a Country where there are no fortified Places, continue long, and a Nation may flouriſh and be happy again. But if once Arbitrary Government be introduced upon the Principles of Paſſive Obedience, Peoples Miſeries are endleſs, there is no proſpect or hopes of Redreſs: Every Age will add new Oppreſſions, and new Burdens to a People already exhauſted. If he, by God's Command, was to be curſed that removed his Neighbour's Land-mark, what Curſes muſt they deſerve that make it their Buſineſs to remove all

the Bounds, Fences, and Securities that People have, not only for their Lands, but their Liberties and Lives, and proſtrate them at the Feet of a ſingle Perſon? If it be ſo great a Crime, that upon no account, as they pretend, it is lawful to change the Perſon that has the Executive Power. how much greater muſt their Crimes be that deſtroy the Conſtitution, and ſubvert the whole Government, and ſet up a new one that is infinitely worſe?

This I think is ſufficient to ſhow that the People have a Right, eſpecially in a limited Government, where they are Subjects no farther than the Laws require, to defend their Liberties and Privileges; and that a King by endeavouring to ruin and enſlave them, has loſt all the Ties he had to their Obedience, and has no longer a Right to command them; and they may then place the Adminiſtration of their Affairs in other Hands; which when they have done, what reaſon have they to allow him, that deſigned to ruin and enſlave them, greater Privileges than any other private Perſon, who never intended them any Miſchief? Or what reaſon have other Nations to allow him thoſe Privileges, which they cannot without Injury to themſelves, pay to any but thoſe that have *ſummum Imperium*.

But to return; Dr. *Waller* and Dr. *Nuton*, who alſo attended, did not declare their Opinions: Dr. *W.* excuſed himſelf, that he had not time to conſider the Queſtion; and Dr. *N.* ſaid it was againſt his Conſcience, or words to that effect, to have a Hand in Blood. I ſuppoſe with this tacit Reſerve, except it were in hopes of being Advocate of the Admiralty, whoſe Buſineſs it is (if proſecuting Pirates and Malefactors may be called ſo) to have a Hand in Blood.

But to conclude; I hope I have ſufficiently proved what I deſigned, and have not only anſwered all the Objections that were then made, but have obviated whatever can reaſonably be urged to the contrary.

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